

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

**IN RE: NATIONAL PRESCRIPTION OPIATE
LITIGATION**

This document relates to: *Track Two Cases*

*Cabell County Commission v. AmerisourceBergen
Drug Corporation, et al.*
Case No. 1:17-op-45053

*City of Huntington, W.Va. v. Amerisource Bergen
Drug Corp., et al.*
Case No. 17-OP-45054

MDL No. 2804

Case No. 17-md-2804

Judge Dan Aaron Polster

**PLAINTIFFS CABELL COUNTY COMMISSION and
CITY OF HUNTINGTON'S MOTION TO SEVER**

COME NOW Plaintiffs, CABELL COUNTY COMMISSION and CITY OF HUNTINGTON, by counsel, and comply with the *Order Regarding Track Two Cases* (Doc #: 2950) by requesting the Court sever all but the following defendants¹ from this civil action:

1. AmerisourceBergen Drug Corporation;
2. Cardinal Health, Inc.; and
3. McKesson Corporation.

Following severance, Plaintiffs intend to voluntarily dismiss all causes of action against the aforementioned defendants (“the Big 3”) other than common law public nuisance (Count I)

¹ Plaintiffs preserve their claims and causes of action against the severed defendants and seek to proceed against the same in a parallel track to CT1b.

(Doc. #2595). Plaintiffs intend to invoke the legal doctrine of civil conspiracy² which imposes statutory joint liability³. Plaintiffs intend to seek **only** money damages for the “elimination of hazards to public health and safety and to abate or cause to be abated ... a public nuisance.” W. Va. Code § 7-1-3kk; W. Va. Code § 8-12-5(23). Plaintiffs intend to seek punitive damages.⁴ W. Va. Code § 55-7-29. Plaintiffs intend to resolve all pending discovery disputes and then seek immediate remand for a bifurcated bench trial as soon as possible.

Dated: December 13, 2019

Respectfully submitted,

THE CITY OF HUNTINGTON

CABELL COUNTY COMMISSION

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² A civil conspiracy is not a per se, stand-alone cause of action; it is instead a legal doctrine under which liability for a tort may be imposed on people who did not actually commit a tort themselves but who shared a common plan for its commission with the actual perpetrator(s). *Dunn v. Rockwell*, 225 W. Va. 43, 689 S.E.2d 255, Syl. Pt. 9 (2009).

³ Joint liability may be imposed on two or more defendants who “consciously conspire and deliberately pursue a common plan or design to commit a tortious act or omission.” W. Va. Code § 55-7-13c.

⁴ An award of punitive damages may only occur in a civil action against a defendant if a plaintiff establishes by clear and convincing evidence that the damages suffered were the result of the conduct that was carried out by the defendant with actual malice toward the plaintiff or a conscious, reckless and outrageous indifference to the health, safety and welfare of others. W. Va. Code § 55-7-29.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on December 13, 2019, a copy of the foregoing **PLAINTIFFS CABELL COUNTY COMMISSION and CITY OF HUNTINGTON'S MOTION TO SEVER** has been filed electronically using the Court's CM/ECF system and will be served *via* the Court's CM/ECF filing system, which will send notification of such filing to the attorneys of record at their e-mail addresses on file with the Court.

/s/ Paul T. Farrell, Jr.

Paul T. Farrell, Jr.